(1)

Supreme Court, U.S.
FILED

No. 05-250 APR 27 2005

OFFICE OF THE CLERK
UNITED STATES SUPREME COURT

JAMES G. ROWDEN

Plaintiff-Appellant

v.

UNITED STATES OF AMERICA, et al.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
FERNANDEZ, GRABER AND GOULD, CIRCUIT JUDGES.

PETITION FOR A WRIT OF CERTIORARI

FOR VIOLATION OF THE CONSTITUTION OF THE UNITED STATES-
DUE PROCESS AND TRIAL BY JURY

JAMES G. ROWDEN
P.O. Box 272
Nipomo, California 93444
Telephone: (530) 277-4431
Citizen In Pro Per

RECEIVED
MAY 4 – 2005
OFFICE OF THE CLERK
SUPREME COURT, U.S.

JAMES G. ROWDEN CASE NUMBER

vs.

UNITED STATES OF AMERICA

STATE OF CALIFORNIA

HONORABLE FRANK D. FRANCIS, JUDGE, RETIRED

HONORABLE JOHN H. DARLINGTON, JUDGE

HONORABLE J. SIMS, JUDGE

HONORABLE J. CALLAHAN, JUDGE

HONORABLE P.J. PUGLIA, JUDGE

SEVERSON AND WERSON, A PROFESSIONAL CORPORATION

COLLEEN H. MCDONALD, SB#176966

GREGORY C. NUTI, SB#114823

MICHAEL J. BERTINETTI, SB#56558

HONORABLE M. KATHLEEN BUTZ, JUDGE

MATTHEW R. EASTON, SB#160148

AL SEASTRAND, ATTORNEY

GROKENBERGER, SMITH AND COURTNEY, A PROFESSIONAL CORPORATION

DAVID M. GROKENGERGER, ATTORNEY

RAYMOND S. COURTNEY, ATTORNEY

HONORABLE JOE S. GRAY, JUDAGE

QUESTIONS FOR REVIEW
(RULE 14.1(a))

The questions and circumstances of the case is denial of Constitutional Rights of Due Process (fairness) and Trial by Jury, denying even consideration of defenses. The question is if the Supreme Court is going to contiue the perversion of the Constitution or uphold the Constitution thee has sworn to uphold, oath of office.

GROUNDS ON WHICH JURISDICTION IS INVOKED
Rule 14.1 (e) and (f)

Violating the Constitution of the United States of America.

Article III Section 2. (1) and (3) Judicial Powers and Trial by Jury.

Amendment V (1791) Due Process of Law

Amendment VII (1791) Trial by Jury

Amendment XIV (1863) Section I Due Process of Law, Equal Protection of law.

Article VI (2) and (3) Violation of the Oath of Office and Oath of Admission to Support the Constitution of the United States.

PREAMBLE: We the people of the United States in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish the Constitution for the United States of America.

Article III Section 1. The judicial power of the United States, shall extend to all Cases. The Judges both of the Supreme and inferior courts, shall hold their Offices during good Behavior. (In part) Section 2. (1) The Judicial Power shall extend to all Cases, in Law and Equity arising under this Constitution, the Laws of the United Sates and between a State or the Citizens thereof (in part). "Insubstantial" United States Court of Appeals Ninth Circuit (exh. A),

and "failure to state a cause of action" Superior Court of the State of California County of Sacramento (exh. D).

Rule 14.1 (i) Date Judgement entered (filed) 2/11/05 (exh. A), 5/05/2004 (exh. B), and 6/08/2004 (exh. C).

REASONS FOR ALLOWANCE OF WRIT
RULE 14.1 (h))

There are special and important reasons the Petition for a Writ of Certiorari should be granted. Compelling reasons are:

1. Departure by lower courts regarding the intentions of the Constitution calls for an exercise of supervisory power by this court. "Insubstantial", "no cause of action". Violating the Constitution!

2. Courts of Appeal has decided an important question of Federal Law that has not been, but should be, settled by this court.

3. This case involves principles the settlement of which is of importance to the public (the Constitution).

4. Special and important reasons of Constitutional dimensions, avoidance becomes evasion ("insubstantial, no cause of action").

5. Sound judicial discretion, insuring a commitment to the rule of law and oath to uphold the Constitution, for the protection of the people not the attorneys. Of the people, by the people and for the people.

CONCISE STATEMENT
(Rule 14.1g)

1. The United States Court of Appeals for the Ninth Circuit No. 04-16349, D.C. No. CV-03-025 93GEB, Memorandum (exhibit A): "Appellee's motions for summary affirmance are granted because the questions raised (violation of the Constitution: Due Process and Trial by July) in this appeal are so insubstantial as not to require further _____" ?

2. Judges and attorneys violating the law, their oath of office and admissions to uphold the Constitution are so insubstantial as not to require a complete answer or an answer at all?

3. This disposition is not appropriate for publication". I guess not. They would not want the public to know how the courts are preverting the Constitution and violating their oath of office.

4. INSUBSTANTIAL: Lacking substance, not of considerable value (the Constitution! Maybe not to them?). Actually not existing (might as well not); real; illusive; something without value or merit; lacking substance; not firm; the essence of what is said or written; reality as opposed to appearance. The courts answer makes the Constitution appear insubstantial!

5. Reality is the justice system perverting the Constitution

while patronizing the Constitution. Amendment V, in part, not be deprived of life, liberty or property without due process of law (fairness).

6. Amendment VII, in part, "the right of trial by jury shall be preserved".

7. Nowhere does the Constitution give immunity to Judges or attorneys which are put in place to protect the people from government (judges and attorneys). The Constitution, in regards to questions raised, is insubstantial or actually not existing? The United States District Court for the Eastern District of California, Magistrate Judge K. S. Mueller, Findings and Recommendations, stated, "The Supreme Court has held that judges acting withing the course and scope of their judicial duties are absolutely immune from liability for damages." (exhibit B). "Acting within the course and scope of their judicial duties."

8. COURSE: What is customarily or ordinarily done in the management of trade or business. Violating the law; precedent, the Constitution and oath of office, usually and normally done? It appears so.

9. SCOPE: Ultimate intention, aim or action; liberty; the range within an activity displays itself; boundry or limits. The scope,

boundry or limits should stay within the law, the Constitution, fairness, the ultimate intent, aim or action, certainly was to be fair, just and lawful!

10. JUDICIAL DUTIES: A human action which is exactly conformable to the laws which regulate us to obey them; an obligation that one has by law or contract (oath) legal and or moral obligation to conform to legal standards of reasonable conduct in light of apparent risks. There is the problem, there is no risks. If you want these practices (violating the Constitution, the law and unfairness) to continue, do nothing, they will continue to be propigated. Judges were certainly not acting within the course and scope of their judicial duties in any way, shape or form. This is customarily or ordinarily done? I pray not. Ultimate intention, aim or activity, within boundry or limits. I think not. Exactly conforming to the laws, obligation one has by law. Not. Legal and moral obligation to conform to legal standards or reasonable conduct. Their actions obviously were none of these. Each court that defended these illegal acts and make excuses for them, shirks their judicial duties and are in violation of the Constitution and their oath of office.

11. District Judge Garland E. Burrell adopted the findings

and reommendations of Magistrate Judge K. S. Mueller in full. (Exhibit C.) The court declined supplemental jurisdiction over the remaining claims under 28 U.S.C. sec. 1367 (c) (3). Walker v. Texas (2002 ED tex.) 217F Supp. 2d 776. Supplemental jurisdiction under sec 1367 does not override Constitution (3 others). Judge Gray of the Superior Court of California, county of Sacramento ruled (exhibit D), "There is no cause of action". No cause of action for violating the constitution, violating the Oath of Office, Oath of Admissions to uphold the Constitution of the United States of America, and no laws were broken? Where attorneys violated the Constitution! These six judges and attorneys (all) have violated their oaths to uphold the Constitution by denying Due Process and Trial by Jury. The brotherhood (fraternity) of lawyers takes precedent over the Constitution! Which was put in place to protect the people from government.

CONCLUSION

12. If our judicial system is to inspire a sense of confidence among the people, and ensure a commitment to the rule of law, they must at least honor their oath of office, the very ligitimacy of our system of justice depends upon continued vigilance against such Constitutional violations by the very people sworn to and appointed

to uphold and honor the Constitution of these United States of America. "Judges both of the Supreme and inferior courts shall hold their office during good behavior." Violating the law, the Constitution, their Oath of Office, and fairness is good behavior? I pray not.

13. The Declaration of Independence states, "In every stage of these Oppressions we (I) have Petitioned for Redress in the most humble terms. Our (my) repeated petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a tyrant is unfit to be the ruler of the free people." If this writ is denied, it will not be the end. I will use my First Amendment Rights and take my case to the people, which should have been allowed in the beginning. Trial by Jury, and Due Process (fairness).

14. I pray you allow Due Process and Trial by Jury as the Constitution demands.

Date: 22 June 2005

JAMES G. ROWDEN

Citizen In Pro Per

FEB 11 2005

CATHY A CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAMES G. ROWDEN,

Plaintiff – Appellant,

v.

UNITED STATES OF AMERICA; et al.,

Defendants – Appellees.

No. 04-16349

D.C. No. CV-03-02593-GEB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Garland E. Burrell, District Judge, Presiding

Submitted February 7, 2005::

Before: FERNANDEX, GRABER, AND GOULD, Circuit Judges.

Appellees' motions for summary affirmance are granted because the questions raised in this appeal are so insubstantial as not to require further

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

EXHIBIT A (RULE 14.1(d))

argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam).

Accordingly, we summarily affirm the district court's judgment.

All pending motions are denied as moot.

AFFIRMED.

FILED

MAY 05 2004

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES ROWDEN,

Plaintiff, No. CIV S-02-2593 GEB KJM PS

vs.

UNITED STATES OF AMERICA, et al., ORDER AND FINDINGS AND RECOMMENDATIONS

Defendants,

Defendants' motions to dismiss came on regularly for hearing April 14, 2004. Plaintiff appeared in propria persona. Andres Garza appeared for defendant State of California and the defendant judges. Yoshinori Himel appeared for defendant United States of America. Upon review of the motion of the documents in support and opposition, and good cause appearing therefore, THE COURT MAKES THE FOLLOWING FINDINGS:

In this action, plaintiff complains about events that occurred during certain state court actions, including a foreclosure action in which plaintiff was a defendants. Named in the instant action are

EXHIBIT B

several state court judges. The Supreme Court has held that judges acting within the course and scope of their judicial duties are absolutely immune from liability for damages. Cleavinger v. Saxner, 474 U.S. 193 (1985); see also Ashelman v. Pope, 793 F.2d 1072, 1075 (9th Cir. 1986). There can be no dispute that the actions challenged here, namely the granting of a motion for summary judgment, denying a motion to reconsider, consideration of an appeal, and ruling against plaintiff on various motions, were by defendants acting within the scope of their judicial duties. Plaintiff presents no cognizable claim that can overcome the bar of judicial immunity. The claims against the defendant state court judges therefore should be dismissed without leave to amend.

Defendant State of California contends it is immune from suit under the Eleventh Amendment. It is well established that a state such as California cannot be subject to suit under 42 U.S.C. § 1983. Will v Michigan Dep't of State Police, 491 U.S. 58, 66 (1989). Plaintiff suggests no other theory of liability that would allow a suit against the state to proceed. The claims against this defendant should also be dismissed with prejudice.

Defendant United States of America is the defendant first named in the action. However, the body of the complaint contains

no allegations of any wrongdoing by this defendant. To the extent plaintiff seeks a declaratory judgment abolishing judicial immunity, there is simply no controversy between plaintiff and defendant United States of America. As such, this court has no subject matter jurisdiction over the claim against defendant United States of America. See 28 U.S.C. § 2201.

The allegations as to the remaining defendants are, at best, legal malpractice claims. There being only state claims remaining, the court should decline to exercise supplemental jurisdiction under 28 U.S.C. § 1367(c)(3).

Accordingly, IT IS HEREBY ORDERED that:

1. The hearing on defendants' motion to dismiss, calendared for May 12, 2004, is vacated;

2. The status conference, set for May 19, 2004, is vacated; and

IT IS HEREBY RECOMMENDED that:

1. The motions to dismiss of defendant United States of America and defendants State of California, Francis, Darlington, Butz, Sims, Callahan, Puglia, and Gray be granted;

2. The court decline supplemental jurisdiction over the remaining claims under 28 U.S.C. § 1367(c)(3); and

3. This action be dismissed.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within ten days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be served and filed within ten days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: May 3, 2004

UNITED STATES MAGISTRATE JUDGE

FILED

JUN – 8 2004

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES ROWDEN,

Plaintiff, No. CIV S-03-2593 GEB KJM PS

vs.

UNITED STATES OF AMERICA, et al., ORDER

Defendants,

Plaintiff, proceeding pro se, filed the above-entitled action. The matter was referred to a United States Magistrate Judge pursuant to Local Rule 72-302(c)(21).

On May 5, 2004, the magistrate judge filed findings and recommendations herein which were served on the parties and which contained notice to the parties that any objections to the findings and recommendations were to be filed within ten days. No objections to the findings and recommendations have been filed. (WERE ATTACHED, HAVE POSTAL RECEIPT)

The court has reviewed the file and finds the findings and

EXHIBIT C

recommendations to be supported by the record and by the magistrate judge's analysis. Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed May 5, 2004, are adopted in full;

2. The motions to dismiss of defendant United States of America and defendants State of California, Francis, Darlington, Butz, Sims, Callahan, Puglia, and Gray are granted;

3. The Court declines supplemental jurisdiction over the remaining claims under 28 U.S.C § 1367(c)(3); and (NOT LEGAL, WALKER V. TEXAS (2002 ED. TEX.) – 217 F SUPP.2d 776)

4. This action is dismissed.

DATED: 6/7/04

UNITED STATES DISTRICT JUDGE

BILL LOCKYER, Attorney General
of the State of California
DARRYL L DOKE, Lead Supervising
Deputy Attorney General
THOMAS D McCRACKIN, Supervising
Deputy Attorney General
KIMBERLY ZIERMAN
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Post Office Box 944255
Sacramento, California 94244-2550
Telephone: (916) 322-3870
Facsimile: (916) 322-8288

**Attorneys for Defendants
State of California; The Honorable Frank Francis;
The Honorable John Darlington; The Honorable M. Kathleen
Butz; The Honorable Richard Sims;
The Honorable Robert Puglia; The Honorable Connie
Callahan**

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

JAMES G. ROWDEN,	)	Case No. 02AS02858
	)	
Plaintiff,	)	**JUDGEMENT OF DISMISSAL**
	)	
	)	
v.	)	
	)	
THE STATE OF CALIFORNIA	)	
et al.,	)	Dept: 54
	)	Judge: JOE S. GRAY
Defendants.	)	
	)	
	)	

EXHIBIT D

The Demurrer of Defendants State of California; The Honorable Frank Francis; The Honorable John Darlington; The Honorable M. Kathleen Butz; The Honorable Richard Sims; The Honorable Robert Puglia and The Honorable Connie Callahan came on for hearing on July 25, 2002, the Honorable Joe S. Gray, Judge of the Superior Court, presiding. Plaintiff appeared *in propia persona*. Defendants were represented by Deputy Attorney General Kimberly Zierman.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

The Demurrer is granted without leave to amend for failure to state a cause of action. The complaint is barred by the doctrine of judicial immunity. Judgment of dismissal with prejudice is granted to Defendants State of California; The Honorable Frank Francis; The Honorable John Darlington; The Honorable M. Kathleen Butz; The Honorable Richard Sims; The Honorable Robert Puglia and The Honorable Connie Callahan. The Complaint is dismissed with prejudice, and the Summons is discharged. Plaintiff shall take nothing by reason of his complaint.

DEFENDANT: AL SEASTRAND, ATTORNEY, DID NOT BOTHER TO ANSWER.

Dated:

JOE S GRAY
Judge of the Superior Court

P.O. Box 272
Nipomo, CA 93444-0272

August 12, 2002

STATE OF CALIFORNIA
Office of Attorney General
P.O. Box 944255
Sacramento, CA 94244-2550

Subject: Rowden v State of California, et al
Sacramento Superior Court – Case # 02AS02858

To Whom It May Concern,

I refuse to sign your Judgment of Dismissal as it does not conform to the law, nor is it just, fair or right and is a perversion of the law and constitution of the State of California and the United States of America.

"FAILURE TO STATE A CAUSE OF ACTION". Cause of action: The fact or facts which give a person a right to judicial redress. The legal effect of an occurrence in terms of redress to a party to the occurrence. Failure to perform legal obligation. To do or refrain from performance of some act. Unlawful violation or invasion of rights. The right which a party has to institute a judicial proceeding: Civil sec 52.1 Interference With Exercise of Civil Rights – Remedies, sec (a) rights secured by the Constitution or laws of the United States or rights secured by the constitutional laws of this state. The Attorney General may bring civil action. (b) Any individual whose

exercise or enjoyment of rights secured by the Constitution of the United States or this state (California) has been interfered with. (a) May institute a prosecution in his or her own name on his or her own behalf a civil action for damages. The complaint dismisses with prejudice stated TWELVE (12) times the violation of my constitutional rights... "NO CAUSE OF ACTION"!

You and Judge Joe E. Gray have violated my constitutional rights along with the six (6) other judges and attorneys, and have violated your oath of office to uphold the Constitution of California and the United States of America.

DOCTRIN OF JUDICIAL IMMUNITY: Gov. Code sec 815.2 Act of Employee Immunity, (a) A public entity IS liable for injury, within the scope of his employment, and gives rise to a CAUSE OF ACTION against that employee. Sec. 815.3 Government Tort Liability (a) elected official and public entity are named. Sec 820.2 Exercise of Discretion. Except as otherwise provided by statute public employee is not liable for his act of omission. If there is a law (Constitution and others) there can be no omission (discretion).

I think a CAUSE OF ACTION was established, and DOCTRINE OF "JUDICIAL IMMUNITY" has been proven false (wrong) in this case. If not you might as well eliminate sec 7 Due Process and sec 16 Right to Trial by Jury, if they are not a Cause of Action and the people who use, enforce and interpret the laws (attorneys, judges

and prosecutors) are "IMMUNE" from not enforcing them, ludicrous. Who else besides attorneys, judges and prosecutors can violate a persons constitutional rights of Due Process and Trial by Jury?

I plan to go forward in the U.S. courts and hopefully find justice.

Hopefully,

JAMES GRAY ROWDEN
Plaintiff In Pro Per
P.O. Box 272
Nipomo, CA 93444-0272

Tel. 530-277-4431

Cc:

Attorney General Bill Lockyer
Judge Joe E. Gray
Sacramento Bee, Court Editor
Numerous state officials and representatives

FOOD FOR THOUGHT:

The Constitution is the supreme law of our land and it governs our actions as citizens. Only the laws of God which govern our conscience, are superior to it.
Pres. Gerald Ford, Nixon Pardon

The passion for truth is silenced by answers which have the weight of undisputed authority.
Paul Tillich

The only stable state is the one in which all men are equal before the law.

Any fool can know. The point is to understand.
Einstein

The law can only tell you the way. It is for you yourself to make the effort.

PROOF OF SERVICE

I, Barbara Rowden, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my address is 2846 Lorencita Dr., Santa Maria, CA 93455.

On 8-12-05 I served the within documents:

PETITION FOR A WRIT OF CERTIORAI, UNITED STATES SUPREME COURT

by placing the documents listed above in a sealed envelope with postage on them fully prepaid in the United States mail at Nipomo, California, addressed as set forth below.

Jeffrey Mason Phillips
Attorney General's Office for the State of California
PO Box 944255
1300 I Street
Suite 125
Sacramento, CA 94244-2550

Yoshinori H T Himel
United States Attorney
501 I Street
Suite 10-100
Sacramento, CA 95814

Betsy S. Kimball
Boyd and Kimball
601 University Avenue
Suite 264
Sacramento, CA 95825

Michael Erik Vinding
The Diepenbrock Law Firm
400 Capitol Mall
Suite 1800
Sacramento, CA 95814

Solicitor General of the United States
Room 5614
Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 8-11-05, at Santa Maria, California

Barbara Rowden

Barbara Rowden